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Supreme Court, U.S.
FILED

No. 05-404 SEP 6 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States

NORBERT ROCH, REGINA ROCH,
ELAINE ROCH & LORRAINE ROCH,

Petitioners,

v.

HUMANE SOCIETY OF BEDFORD COUNTY,
TENNESSEE, INC.; KAY PETTY, INDIVIDUALLY,
AND IN HER CAPACITY AS PRESIDENT
OF THE BEDFORD COUNTY HUMANE
SOCIETY, INC. BEDFORD COUNTY, TN;
LARRY ROBINS, SR.; JOHN DOE; JANE DOE,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

G. KLINE PRESTON, IV
PRESTON LAW GROUP, P.C.
4525 Harding Road, Suite 200
Nashville, TN 37205
(615) 620-4322

Attorney for Petitioners

QUESTION PRESENTED FOR REVIEW

Whether the *Rooker-Feldman* doctrine is applicable before entry of judgment in state court.

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

**NORBERT ROCH, REGINA ROCH, ELAINE ROCH,
AND LORRAINE ROCH**, individuals;

**HUMANE SOCIETY OF BEDFORD COUNTY, TEN-
NESSEE, INC.**, a Tennessee non-profit corporation.

KAY PETTY, individually and in her capacity as Presi-
dent of the Bedford County Humane Society, Inc.

BEDFORD COUNTY, TENNESSEE, a municipal
corporation.

LARRY ROBINS, SR., an individual.

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Roch v. Humane Society of Bedford County, Tennessee, Inc., (6th Cir. June 8, 2005). Appendix A-1.

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Sixth Circuit entered its judgment on June 8, 2005. Appendix A-1. Petitioners Norbert Roch, Regina Roch, Elaine Roch, and Lorraine Roch ("Roch") seek review of that judgment on a writ of certiorari.

The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13.3 of this Court.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of certiorari the judgment of a federal court of appeals.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Constitution of the United States, First Amendment, Fifth Amendment, Fourteenth Amendment.

STATEMENT OF THE CASE

The Petitioners herein sued the Respondents, Humane Society of Bedford County, Tennessee, Inc.; Kay Petty, individually and in her capacity as President of the Bedford County Humane Society, Inc.; Larry Wayne

Robt. Br.; and John and Jane Doe pursuant to 42 U.S.C. § 1983 for violations of their civil rights and other pendant state law claims such as trespass, conversion and intentional infliction of emotional distress. The Plaintiffs alleged that on the 12th and 13th days of May, 2001, and again on October 20, 2001, the Defendants entered upon their property and, without a search warrant, took thirty-nine (39) animals from the Plaintiffs. The Plaintiffs entered their property on October 20, 2001, and executed forty-five (45) dogs without the permission, authority, and adjudication as to each individual animal to which they owed a duty to conduct a full hearing on the merits to ascertain the physical condition of each dog. The Plaintiffs brought an action against these Defendants pursuant to 42 U.S.C. § 1983 and pendant state law claims for conversion, trespass, and intentional infliction of emotional distress.

The Defendants filed motions for summary judgment and to dismiss, and the District Court granted the motions, applying the summary judgment standard. Appendix A-2.

The Court of Appeals, holding jurisdiction under 28 U.S.C. § 1291, filed its opinion on June 8, 2005. Appendix A-1. The Clerk entered judgment on the same date. The Petitioners did not petition the Court of Appeals for rehearing *en banc*.

ARGUMENT

A. THE COURT OF APPEALS DECISION FAILS TO FOLLOW AN OPINION OF THE SUPREME COURT.

The Court of Appeals held that the *Rooker - Feldman* doctrine precluded the District Court's exercise of jurisdiction in a case in which the State Court action between the parties had not been concluded and was not subject to a final order. The Court of Appeals majority decision conflicts with existing and well-established Supreme Court doctrine with respect to the application of the *Rooker - Feldman* doctrine. This compels a result opposite to that reached by the Court of Appeals.

1. THE COURT OF APPEALS DECISION FAILS TO FOLLOW AN EXISTING SUPREME COURT OPINION.

In *Exxon Mobil Corporation v. Saudi Basic Industries Corporation*, 125 S.Ct. 1517 (2005), this Court addressed the application of the *Rooker - Feldman* doctrine. This Court held that the *Rooker - Feldman* doctrine is confined to cases brought by State Court losers complaining of injuries caused by State Court judgments rendered before the Federal District Court proceedings commenced and inviting District Court review and rejection of those judgments. The Court further found that the *Rooker - Feldman* doctrine does not otherwise override or supplant preclusion doctrine or augment doctrines that allow federal courts to stay or dismiss proceedings in deference to State Court actions. This Court also stated that the pendency of an action in State Court is no bar to proceedings concerning the same matter in Federal Court having jurisdiction.

The Court of Appeals majority's decision here applied the *Rooker - Feldman* doctrine without it having been raised by any of the parties to this action and improvidently applied it to a case in which the State Court action was still pending.

In *Exxon Mobil Corporation*, this Court stated that it had applied the *Rooker - Feldman* doctrine only twice, in *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 and in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 2d 206. Federal district courts, this Court recognized in *Rooker*, are empowered to exercise only original, not appellate, jurisdictions. *Id.*, at 416, 44 S.Ct. 149. Because Congress has empowered this Court alone to exercise appellate authority "to reverse or modify a State Court judgment", *ibid.*, the Court affirmed a decree dismissing the federal suit for lack of jurisdiction, *id.*, at 415, 417, 44 S.Ct. 149. In *Feldman*, recalling *Rooker*, this Court observed that the District Court lacked authority to review a final judicial determination of the D.C. High Court because such review "can be obtained only in this Court." 460 U.S., at 476, 103 S.Ct. 1303. Since *Feldman*, this Court has never applied the *Rooker - Feldman* doctrine to dismiss an action for want of jurisdiction. In *Exxon Mobil Corporation*, this Court stated that the lower federal courts have variously interpreted the *Rooker - Feldman* doctrine to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress's conferral of federal court jurisdiction concurrent with jurisdiction exercised by state courts, and superceding the ordinary application of preclusion law under 28 U.S.C. § 1738. The Petitioners submit that this is exactly what the Court of Appeals has done in this case by exercising the *Rooker - Feldman* doctrine in a case in which

the State Court action is not final and in which the issue was not raised by the Defendants in the District Court action.

B. THE PROCEEDING INVOLVES A QUESTION OF EXCEPTIONAL IMPORTANCE, IN THAT THE RESULT, IF UNDISTURBED, WILL LIMIT THE FEDERAL COURTS JURISDICTION TO HEAR CASES INVOLVING CONSTITUTIONAL RIGHTS AND THE DEPRIVATION OF THOSE RIGHTS PURSUANT TO 42 U.S.C. § 1983.

The application by the Court of Appeals of the *Rooker - Feldman* doctrine to a case in which the issue was not raised by the Defendants and the State Court action had not concluded expands the reach of the *Rooker - Feldman* doctrine and unconstitutionally limits the jurisdiction of the federal courts in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution. To allow this application prohibits the Plaintiffs from seeking redress for the deprivation of their constitutional rights pursuant to 42 U.S.C. § 1983.

Review of the Court of Appeals decision through a writ of certiorari will allow the Supreme Court to reverse the Court of Appeals' expansion of the *Rooker - Feldman* doctrine.

Respectfully submitted,

G. KLINE PRESTON, IV

Attorney for Petitioners

September 2005

App. 1

134 Fed.Appx. 68

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

United States Court of Appeals, Sixth Circuit.
Norbert ROCH; Regina Roch; Elaine Roch; and Lorraine
Roch, Plaintiffs-Appellants,

v.

HUMANE SOCIETY OF BEDFORD COUNTY,
TENNESSEE, INC.; Kay Petty, individually and
in her capacity as president of the Bedford County
Humane Society, Inc.; Bedford County, Tennessee;
Larry Robins, Sr.; John Doe; and Jane Doe,
Defendants-Appellees.

No. 04-5208.

June 8, 2005.

On Appeal from the United States District Court for
the Eastern District of Tennessee.

G. Kline Preston, Nashville, TN, for Plaintiffs-Appellants.

Richard L. Dugger, Richard L. Dugger & Associates,
Shelbyville, TN, David J. Pflaum, Mark J. Downton,
Watkins, McGugin, McNeilly & Rowan, Nashville, TN,
William E. Godbold, III, Sean W. Martin, Leitner, Wil-
liams, Dooley & Napolitan, Chattanooga, TN, for Defen-
dants-Appellees.

Before CLAY and SUTTON, Circuit Judges; O'MEARA,
District Judge.*

CLAY, Circuit Judge.

* The Honorable John Corbett O'Meara, United States District
Judge for the Eastern District of Michigan, sitting by designation.